HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16909 of 2007

Date: September 28, 2007

Between:
1. Shaik Bavigadda Lalusab and 3 others. … Petitioners

And

1. The Government of Andhra Pradesh,
   Irrigation and Command Area Development,
   Rep. by its Divisional Engineer,
   I.B. Sub-division, Vemareddy Circle,
   Kadiri, Anantapur District and 2 others. … Respondents

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ORDER:

This Court issued *Rule Nisi* on 27.9.2007. Heard Sri C.V.R.Rudra Prasad, learned counsel representing the writ petitioners and the learned Assistant Government Pleader appearing for Irrigation.

2. The writ petition is filed for a writ of *Mandamus* declaring action of the respondents 1 and 3 and their representatives in seeking to evict the petitioners from the lands in survey No.737/1, admeasuring Ac.4-84 cents and survey Nos.736/1 and 1B admeasuring
Ac.4-94 cents, situated in Ubicherla village, Nallacheruvu Mandal, Anantapur District for the purpose of construction of "Indiramma Cheruvu", without following due process of law, as arbitrary, illegal, highhanded and violative of Fundamental Rights guaranteed under Articles 14 & 19 of the Constitution of India and Article 300-A of the Constitution of India and consequently direct the respondents and their representatives not to interfere with petitioners' peaceful possession and enjoyment of the aforesaid land, without following due process of law and pass such other suitable orders.

3. It is stated that the first petitioner and his brother were absolute owners and possessors of the land in survey No.737/1, admeasuring Ac.4-

84 cents and survey Nos.736/1 and 1B admeasuring Ac.4-94 cents, situated in Ubicherla village, Nallacheruvu Mandal, Anantapur District, by virtue of pattas issued in D.1 Dis.No.189/91, dated 09.8.1982 and D.A.R.Dis.17/1406 dated 29.12.1996. They were also issued pattadar passbooks bearing patta Nos.89, 369 and 470 by the third respondent and countersigned by the Village Secretary and their names were also mutated in the revenue records and their possession was recognized by the competent authority. The Village Revenue Officer, Nallacheruvu, also issued certificates for 1416 fasli furnishing details of the extents of lands owned by them, the crop raised therein and the source of irrigation etc. It is also stated that the lands were being cultivated with dry crops solely depending on rainwater. Since their area was declared as drought effected, the Government had been supplying seed and other subsidies to their lands upon verification of genuineness of the respective claims made by them. It is also stated that as and when they did not receive yield due to drought conditions in spite of spending huge amounts for raising dry crops, the Government had been granting *ex-gratia* and other drought related reliefs by acknowledging on the pattadar passbooks upon verification of release of subsidies by the 3rd respondent. It is further stated that while so, all of a sudden in the first week of July 2007 the subordinates of the 1st respondent along with one person claiming to be Prathap Reddy, contractor under it, came to their lands with men and material on the ground that they wanted to dig “Indiramma Cheruvu” in a time bound manner, for which they resisted and informed the 3rd respondent that there was no other source of livelihood to their families and if their lands were required for construction of “Indiramma Cheruvu” they were liable to pay compensation or provide alternative site under the rehabilitation schemes. The 3rd respondent received the said representations and informed them that if the land was required for any public purpose, the same would be notified under the Land Acquisition Act and they could restrain any person trying to interfere with their possession even if he was a government official. It is also stated that with the assurance given by the 3rd respondent, as no one turned up, they had developed the land and raised dry crops investing huge amounts. When the local politicians including their village sarpanch along with one Prathap

Reddy, came to their lands on 03.8.2007 and enquired about their right to hold the land, they categorically stated that the said land was assigned in their favour and even prior to the assignment the 1st petitioner and his brother had been in peaceful possession and enjoyment of the same since several years. Later on, the Assistant Engineer of the 1st respondent along with the 3rd respondent came to their land and asked them to be present there in order to obtain their signatures for giving consent to enable the contractor to dig pond and construct the bund for which they refused. Then the alleged contractor stated that the period of work entrusted to him was going to expire by the end of August 2007 and as such he would have no option except to get the assignments cancelled without following any procedure as he was having the support of local politicians. The 3rd respondent also advised them to receive Rs.2,000/- each per acre and permit the so called contractor to execute the work in their land, but they rejected the said offer. Then the Assistant Engineer of the 1st respondent and 3rd respondent threatened them to give possession of the land to the contractor, so that they would show in the records as if the land was handed over to the contractor to which they requested him to pass an order to the said effect. However, without following due process of law, taking recourse to the provisions of the Land Acquisition Act, the subordinates of the 1st respondent with the alleged contractor, once again came to them in the early hours of 04.8.2007 threatened to sign on papers as if they have voluntarily agreed for execution of the work or else they would come with police force and dispossess them. In such circumstances, the petitioners approached this Court praying for appropriate reliefs as specified supra.

4. W.V.M.P.No.2363 of 2007 is filed to vacate the interim order made in W.P.M.P.No.21568 of 2007, dated 09.8.2007. It is stated that the work of "Formation of Percolation Tank across Advivanka near Ubicherla village in Nallacheruvu Mandal" was administratively sanctioned for Rs.31.75 lakhs vide G.O.Rt.No.1402, I & CAD (M.I.III) Department, dated 28.9.2005 under 4702 plan funds (one category of funds in the department) but not under Indiramma Cheruvu Programme. When the M.L.A., Nallamada Assembly Constituency visited Ubicherla village and the above work site on 07.5.2007 during Prajapatham programme, the petitioners represented

the M.L.A for compensation to their lands going to be submerged and the M.L.A. had suggested them not to obstruct the work in view of public interest and at the same time he instructed the Mandal Revenue Officer and Irrigation Officials to initiate process for acquiring the land as per law and, hence, the 1st respondent submitted the land resumption acquiring proposals in the sub-divisional letter No.151M, dated 05.6.2007, to the Revenue Divisional Officer, Penukonda and Tahsildar, Nallacheruvu for acquiring Ac.5-13 cents 'D' form patta land. Thus, only after processing the land resumption proposal, the contractor and department persons went to site along with J.C.B on 25.7.2007 and after objecting the petitioners, they simply returned back from the site along with their machinery. It is also stated that after raising objection by the petitioners as stated above, neither the department persons nor contractor went to the site for execution of the above work and at the same time, land resumption process was accelerated and as a result, R.D.O, Penukonda had instructed the respondent No.3 i.e., Tahsildar, Nallacheruvu, to send the land resumption proposals. Accordingly, respondent No.3 had inspected the site on 04.7.2007 and recommended the following lands in different survey numbers for formation of percolation tank.

Sl. No	Survey No.	Total Extent (Acres)	Extent Under Acqui-sition (Acres)	Name of the pattadar/enjoyer	P.P.No.	Nature of the land

1	735	1.18	0.75	Ummadi Lakshmi narayana, s/o late Venkata ramana, Ubicherla village (Land owner and enjoyer)	651823	D.Patta
2	736-1A	2.47	1.35	Shaik Mahaboob Peera, s/o Lalusab, Ubicherla village (Land owner and enjoyer)	56076	D.Patta
3	736-1B	2.47	1.50	Shaik Hasanvali S/o Lalusab Ubicherla village (Land owner and enjoyer)	56078	D.Patta
4	737-1A	4.84	1.53	Shaik Lalusab, S/o Khasim sab, Ubicherla village (Land owner and enjoyer)	214017	D.Patta
		Total:	5.13			

It is further stated that the Revenue Divisional Officer, Penukonda vide letter R.C.No.852/2007/SDT, Dt.23.8.2007 requested the Executive Engineer, I.B. Division, Penukonda to clarify as to whether he could utilize Rs.1.75 lakhs towards ex-gratia amount payable to the assignees for resuming their lands to an extent of Ac.5-13 cents from the available funds and the Executive Engineer, I.B. Division, Penukonda also accepted and conveyed that the Revenue Divisional Officer could utilize the amount from the available funds. Thus, the respondent moved the land resumption process as per law only. It is also stated that in process of resumption of land, the R.D.O. had requested the Executive Engineer, I.B.Division, Penukona, to utilize an amount of Rs.1.75 lakhs towards ex-gratia payable to assignees/legal heirs for resuming the land to an extent of Ac.5-13 acres in survey Nos.735, 736-1A, 737-1A etc., from the available funds with him.

Accordingly the Executive Engineer, I.B. Division, Penukonda, had also given consent to the same in letter No.670M, Dt.12.9.2007. Thus, the amount of Rs.1.75 lakhs was deposited with the LAO & RDO, Penukonda to resume the land and process of resuming the land by the Revenue authorities is also in the progress. The work of formation of percolation tank would be taken up only after land is handed over to the Irrigation Department after resumption.

5. In the light of the respective stands taken by the parties in the present writ petition and also in the light of the nature of the relief, which had been prayed for, the writ petition is disposed of directing the respondents not to disturb possession of the petitioners unless and until due process is followed.

6. Accordingly, the writ petition is disposed of. No costs.

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(P.S.NARAYANA, J.)

Date: September 28, 2007.

BSB